

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF Hoffman Estates, Illinois

These Comments are filed by Hoffman Estates, Illinois in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Hoffman Estates believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Hoffman Estates is a village with a population of 50,573. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1981.

Our Current Franchise

Our current franchise began on March 1, 1997 and expires on March 1, 2007. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently in the franchise renewal process with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the village in the amount of 5% of the cable operator's revenues. The revenues for franchise fee

purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access.

Our franchise contains the following institutional network ("I-Net") requirements: a separate network dedicated for the exclusive use of the Franchising Authority, Village departments, Schools, libraries, Park Districts, and Not-For-Profit institutions serving the Franchise Area. The I-Net provided the Village with 6 Mbps of connectivity between municipal buildings and was used as the backbone of our computer network. However, as the I-Net aged and became unreliable, the Village found it necessary to replace this I-Net with fiber optic lines and wireless transceivers that are owned and operated by the Village.

Our franchise contains the following requirements regarding emergency alerts:

Grantee shall configure the Cable System to enable carriage of audio emergency override cablecasting over all analog Channels of the Cable System. Said emergency override capability shall be designed to allow the Village President the Village of Hoffman Estates or his or her designee, or Northwest Central Dispatch, to activate the emergency override upon declaration of a public emergency.

Upon requirement by the FCC to participate in the Emergency Alert System, Grantee shall provide notification to the Village within thirty (30) calendar days of receipt of such notification from the FCC, and shall provide it procedures for emergency alert to the Village. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

An example of when this function has been helpful is the following: on several occasions severe weather alerts have been provided to our residents via the emergency alert system.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. We require a local facility within our five suburb region for the purpose of accepting bill payments, which is staffed by skilled customer service representatives and service technicians. The facility accepts bill payments, responds to repair, installation reconnection, disconnection or other service calls, distributes or receives converter boxes, remote control units, modems, and other cable related equipment and

receives Cable Service inquiries. The minimum hours are 9:00 AM to 5:00 PM, Monday through Friday, and 9:00 AM to 3:00 PM on Saturday. It shall also be open for bill payment until 7:00 PM on at least one weekday. The Grantee also has the option to include secured collection boxes for the receipt of bill payments at its facility.

We have agreed to two-hour appointment window for all field transactions, including visits and service calls to customer residences, applicable over a seven day work week. The Grantee may not cancel appointments with a customer after the close of business on the business day prior to the appointment. During Grantee's hours of business, a representative of the Grantee shall contact a customer in the event that a service repair technician or other representative is running late for an appointment and will be unable to keep the scheduled appointment time. Grantee or a representative shall reschedule the appointment, as necessary, at a time which is convenient to the customer.

Consistent with the cable television industry policy of on-time guarantees, the Grantee shall issue a credit if the Grantee's technician is unable to make a scheduled service call appointment or is unable to complete a scheduled service call due to a late arrival. This does not prohibit the Grantee from providing other credits or refunds for missed service appointment in excess of those described in the franchise agreement as a part of its corporate policy or participation in a promotional activity which pertains to the provision of on-time service appointments.

Grantee shall provide a credit for lost Cable Service due to an outage or interruption of Cable Service lasting at least four (4) or more hours. The Grantee shall immediately initiate action for any outage affecting three (3) or more Subscribers who receive services from the same trunk or feeder line. Restoration of the Cable System from a condition of outage shall be completed as promptly as is feasibly possible, but in no situation longer than twenty-four (24) hours after notice without the express authorization of the Franchising Authority.

We require identification of customer service representatives and technicians, as well as identification on company vehicles, and vehicles used by contractors or subcontractors.

Temporary subscriber drops must be buried within 14 days, except during winter freeze conditions.

Where a dispute with a customer cannot be satisfactorily resolved without outside intervention, the Grantee shall voluntarily enter into the Better Business Bureau's Mediation Program, or the Village may intervene to resolve the dispute.

Our original franchise contained the following reasonable build schedule for the cable operator: Within 24 months of the effective date of the franchise, the Franchisee was to construct and activate the cable television system and offer cable communications services to all residences of persons requesting such service within the Primary Service Area.

Within 15 months of the effective date of the Franchise the Franchisee was to install and offer service to not less than 15% of the potential subscribers within the Primary Service Area.

Our franchise requires that the cable operator currently provide service to the following areas of our community: After completion of construction within the Franchise Area, each Grantee shall extend Cable System and make Cable Services Available beyond the Franchise Area as Follows:

Along streets or parts of streets beginning at the boundary of the Franchise Area or any line extension beyond the Franchise Area within one (1) year after any such street reaches a minimum density of twenty-five (25) dwelling units per street mile. The Grantee and the Franchising Authority may agree to a cost-sharing procedure for line within the Franchise Agreement.

Wherever practicable with the installation of utility lines to developing areas having a planned minimum density of at least twenty-five (25) dwelling units per street mile, with lie contiguous to the boundary of the primary Service Area or at the end of any line extensions beyond the Franchise Area.

The Grantee may propose a line extension policy which will result in serving more residents of the Village than is required above.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Our cable system was reconstructed with fiber to the node and each node serving a maximum of 500 homes. It also contains status monitoring with integrated backup power supplies. Cable modem service has been available for several years.

Our franchise contains a "most-favored-nations" provision which states the following:

If the Grantee offers any additional programming or services above and beyond those provided for herein to any other Village or City within the Regional Cable Group boundaries, Grantee shall immediately offer the same service to the Village. (The Regional Cable Group consists of: Buffalo Grove, Elk Grove, Palatine, Rolling Meadows and Hoffman Estates, Illinois)

The state of Illinois has level playing field language so that no providers franchise is more favorable or less burdensome than a competitor's. While not having to be the same, they must be equivalent.

Our franchise contains the following insurance and bonding requirements: general comprehensive liability insurance and umbrella liability insurance, products/completed operations liability insurance, personal injury liability insurance, owners and contractors protected liability insurance, broad form property damage insurance, contractual liability insurance, automobile liability (owned, non-owned, and hired automobiles), workers compensation, and employers liability acceptable to the Village. Said policies shall name the Village as an additional insured and in their capacity as such, Village officers, agent, and employees. Grantee and said Village and officers shall also be named as additional insured, and the policy or policies shall contain cross-liability endorsement. Policies of insurance, insuring the Village and Grantee with regard to all claims mentioned above in the minimum amounts of:

1. Two Million Dollars (\$2,000,000) for bodily injury or death to any one person, within the limit of Ten Million Dollars (\$10,000,000) for bodily injury or death resulting from any one accident.
2. Two Million Dollars (\$2,000,000) for property damage, including damage to Village property, resulting from any one accident.
3. One Million Dollars (\$1,000,000) for all other types of liability resulting from any one occurrence.

The Grantee shall maintain a Security Fund in the form of a letter of credit from a financial institution in the amount of Twenty Thousand Dollars (\$20,000) and a performance bond in the amount of Thirty Thousand Dollars (\$30,000). The Franchising Authority retains the right to require the above letter of credit and performance bond to be replaced with a Fifty Thousand Dollar (\$50,000) letter or credit if in its sole discretion it finds cause to seek such action.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way: Prior to the construction, reconstruction, repair, or maintenance of the Cable System, Grantee shall be required to obtain appropriate permits from the Village. Grantee shall apply for said permits and make payment at the time of application for such permits as are required by ordinances of the Village which are necessary for Grantee in order to conduct such construction, reconstruction, repair or maintenance of Grantee's Cable System. There are no fees charged by the Village

related to application, securing, maintaining, retaining, and renewing any permits, licenses, or other authorizations to the Grantee for work in the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Village has the right to inspect the cable system for adherence to electrical and safety codes, such as the National Electrical Code and National Electrical Safety Code, and the right to test for compliance with FCC standards. We track outages and customer service standard compliance monthly, and have the right to audit financial records related to the Franchise Area.

The Village may assess Liquidated Damages if the Grantee fails to comply with the Franchise in the following amounts:

Failure to substantially complete Cable System upgrade, unless the Franchising Authority approves the delay or such delay was unavoidable, \$500 per day.

Failure to obtain a permit where construction, reconstruction, or relocation of the Cable System or its components with the Public Streets or Public Ways of the Village is undertaken, \$25 per occurrence per day.

Failure to the Grantee to comply with construction, operation, or maintenance standards for the Cable System or the Institutional Network shall be \$200 per occurrence per day.

Failure to provide customer services as stated in this Agreement, \$25 per occurrence per day.

Failure to test, analyze and report on the performance of the Cable System or the Institutional Network following a request by the Franchising Authority shall be \$100 per occurrence per day.

Failure to provide data, documents, reports, or information, or to cooperate with the Franchising Authority during a performance review of the Cable System or Institutional Network, or during a Franchise Fee Audit or Agreed-Upon Procedures evaluation shall be \$100 per day.

Failure to submit timely reports under this Agreement and the Cable Communications Article shall be \$100 per day.

The Grantee shall have seven (7) calendar days subsequent to receipt of a notice in which to correct or dispute the violation before the Village may draw the Liquidated Damages from the Security Fund.

The Franchising Process

The cable system serving our community also serves four adjoining communities: Buffalo Grove, Elk Grove, Palatine and Rolling Meadows. In 1997 our community worked together with these other communities to issue a cable franchise for the Continental cable company. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

The Franchising Authority may, on its own motion, or at the request of the Grantee for good cause shown, waive any requirement of this Agreement.

If any provision of this Franchise Agreement or the particular application there of shall be held invalid by any federal or state law, ordinance, or regulation, or any ruling or directive by an administrative agency, regulatory body or court of competent jurisdiction, the remaining provision and their application shall not be affected.

The Franchise Agreement shall be governed insofar as applicable with the laws of the State of Illinois. Where federal jurisdiction applies, this Franchise Agreement shall be governed by the applicable laws and agencies of the United States Government.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: a committee hearing is

held and public comment is invited. The franchise, or franchise renewal, is then subject to two readings of the ordinance where public comment is again permitted.

Competitive Cable Systems

Our community has actively sought out competitive providers, but has not been successful. Ameritech New Media, now “WOW”, was a party to our last franchising process. After two years of franchise renewal discussions with our five community consortium and Continental Cablevision Ameritech New Media declined to submit a proposal, purportedly over concerns about possible exclusivity agreements between HBO and Cinemax with Continental Cablevision. Five years later, the Villages of Hoffman Estates, Palatine and Buffalo Grove placed national advertisements for a competitive cable provider but received no responses.

Conclusions

The local cable franchising process functions well in Hoffman Estates. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Village of Hoffman Estates therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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